IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.197 of 1999.

Date of decision:May 30, 2007 .

Premi Devi & Ors. **…Appellants.**

Vs.

The Land Acquisition Collector & Ors. **…Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants & Proforma respondents No.3 to 5. : **Mr.Ramakant Sharma, Advocate.**

For the Respondents : **Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge (Oral).

The appellants are in appeal against the order dated 7.5.1999 whereby learned District Judge, Solan has dismissed case No.50-S/4 of 94/93.

2. The brief facts are that a notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 19.8.1988 for acquiring land comprised in Khasra Nos.157, 158, 159, 160 and 161, Kitas 5 measuring 21 Bighas 2 Biswas situate in village Kamli, Parwanoo, Tehsil Kasauli, District Solan for establishment of Terminal Fruit and Vegetables Market at village Kamli. The Collector announced the award on 10.12.1991 but the compensation of the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

house and trees standing on this land could not be awarded earlier, therefore, by way of supplementary award dated 30.6.1993 the Collector awarded Rs.7765/- for a *Kacha* house situate on Khasra No.157 and Rs.4066/- for non fruit and fruit trees. A petition under Section 18 of the Act was filed for determination of market value of the house and for payment of rehabilitation charges. In the petition, it was pleaded that the market value of the house was Rs.50,000/- at the time of acquisition. The claim was contested by the Land Acquisition Collector by filing the reply.

3. The issues were framed on 16.4.1996 and the case was fixed for original claimant's evidence. In the meantime, original claimant / predecessor-in-interest of appellants died and his legal representatives were brought on record vide order dated 11.3.1997 of the learned District Judge. On 14.3.1997 the case was fixed for evidence of the appellants on 22.5.1997, however, the reference petition was dismissed in default on 22.8.1997 but was restored on 17.11.1998 and thereafter the case was fixed for evidence. No witness of the appellants was present on 22.2.1999 and 7.4.1999. On 7.5.1999 also no witness of the appellants was present nor steps were taken, therefore, the learned District Judge dismissed the petition for non compliance on 7.5.1999. This order has been assailed by way of present appeal in this Court.

4. I have heard learned counsel for the parties and have also gone through the record.

5. The learned counsel for the appellants has submitted that the appellants / claimants are poor persons. Their predecessor in interest died during the pendency of the reference petition before the learned District Judge. They could not produce the evidence before the learned District Judge due to communication gap. It has been urged by the learned counsel for the appellants that house of the appellants was acquired and market value has not been assessed properly by the Collector. In case one opportunity is given to the appellants to produce their entire evidence that will not cause any prejudice to the opposite side. The appellants, in the absence of evidence, shall not be in a position to establish their case of enhancement of compensation for acquiring their house. The learned Additional Advocate General has submitted that the learned District Judge has given many opportunities to the appellants but they failed to produce their evidence. The learned District Judge has rightly dismissed the reference petition for non compliance of the order.

6. The appellants' house was acquired. The Collector has awarded Rs.7765/- compensation being the market value of the house. The appellants are claiming Rs.50,000/- on account of acquisition of their house. The substantial rights of appellants are involved in the case. In absence of proof the appellants claim is likely

to fail. No prejudice will be caused to any party if decision is given on merits after giving an opportunity to the parties to lead evidence. In the facts and circumstances of the case, in my view, the ends of justice will be served if on payment of costs one opportunity is given to the appellants to produce their entire evidence before the learned District Judge in the reference petition on the date to be fixed by the reference Court. Therefore, the appeal is allowed and the impugned order is set aside. The case is remanded to learned District Judge, Solan with a direction to give only one opportunity to the appellants to adduce their entire evidence on payment of Rs.3000/- costs to be paid by the appellants to the respondent. The appellants can take the assistance of the Court for summoning official witnesses but in no case the learned District Judge shall grant more than one opportunity to the appellants for producing their evidence even if any witness of the appellants despite assistance of the Court does not appear for making statement in the Court. After recording the evidence of appellants / claimants the learned District Judge shall give opportunity to the respondents herein for leading evidence.

7. In view of the above, the appeal is allowed in the aforesaid terms. Case is remanded to the learned District Judge, Solan and the parties through their counsel are directed to appear before the learned District Judge on ***29th June, 2007*** and on that date the learned District Judge shall fix the case for appellants' evidence.

The Registry shall immediately transmit the record of the reference petition to the learned District Judge so as to reach before the date fixed. The learned District Judge shall decide the case expeditiously and preferably by ***31.12.2007***.

May 30, 2007. ***(Kuldip Singh)***
(soni) ***Judge.***

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.125 of 1998.

Reserved on:26.04.2007.

Date of decision:May 25, 2007 .

Khiali Ram & Ors. **…Appellants.**

Vs.

State of H.P.

…Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[2]

For the Appellants : Mr.G.D.Verma, Senior Advocate with Mr.B.C.Verma, Advocate.

For the Respondent : Mr.M.L.Chauhan, Addl.A.G.

Kuldip Singh, Judge.

For Judgment, see judgment of date rendered in ***RFA No.36 of 1998 titled Prem Lal & Others Versus State of Himachal Pradesh.***

May 25, 2007. ***(Kuldip Singh)***

(soni) ***Judge.***

Whether the reporters of the local papers may be allowed to see the Judgment?